

U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATE: April 23, 1987
CASE NO. 86-BCA-22
IN THE APPEAL OF

SOUTHEASTERN TRAINING CORPORATION
APPELLANT

v.

U.S. DEPARTMENT OF LABOR
RESPONDENT

DECISION AND-ORDER ON CONTRACTING OFFICER'S MOTION TO
DISMISS AND APPELLANT'S MOTION FOR LEAVE TO FILE OUT OF TIME

This is a timely appeal from the Final Decision of a Contracting Officer, Employment and Training Administration, U.S. Department of Labor, dated March 25, 1986. The decision which Appellant has appealed related to Audit Report No. 09-5-238-03-370 relating to Contract No. 37-1-006-43, covering the period April 1, 1983, through May 31, 1984, concerning certain allowed and disallowed costs. Appellant has filed three amendments to its prehearing statement and to its complaint. In its amended complaint filed December 21, 1986, which accompanied its Third Amendment to the Prehearing Statement, Appellant alleged for the first time in paragraph 5,

Appellant provided Respondent with \$380,175 in general and administrative support services (see "Exhibit B" - INDIRECT COST AUDIT REPORT pg. 23) over and above the amount Appellant was reimbursed. The expenditures for said support services were substantiated by Respondent's agent and Respondent accepted said services for the period Appellant performed services for Respondent. Respondent refuses to acknowledge Appellant's claim based on Respondent's decision to arbitrarily establish a dollar ceiling limitation without consideration for review and adjustment.

Appellant also identified this claim as an issue for the first time in its Third Amendment to the Prehearing Statement filed December 21, 1986.

Appellant's Exhibit B, referred to, is an Indirect Cost Audit Report for the period January 1, 1978, through December 31, 1984, a period

substantially in excess of the period covered by the audit report to which the Final Decision of the Contracting Officer of March 25, 1986, related. The stated purpose of this audit was to determine the allowable indirect cost rate for each year audited, because the corporation [Appellant] had not submitted a proposal for an indirect cost rate during the audit period and, accordingly, the indirect cost pool, which was determined by the accountants and accepted as accurate by Appellant, had not been submitted to the office of Cost Determination. There is no reference to any particular contract in that report. It is evident from the face of the document that its findings were not within the intended or imputable scope of the Contracting Officer's March 25, 1986, decision. Appellant has neither alleged nor made any showing to the contrary.

On March 20, 1987, Respondent filed a Motion to Dismiss Appellant's claim for \$380,175 in indirect costs because Appellant had not properly presented its claim to nor received an adverse Contracting Officer's decision pursuant to the Contract Disputes Act of 1978, or the Disputes Clause of the subject contract. Respondent alleges that, because of that omission, this Board of Contract Appeals is without jurisdiction to hear the claim.

On April 22, 1987, Appellant filed its Motion for Leave to File Out of Time alleging that it had mistakenly believed that it had 30 days from Respondent's filing date to respond to Respondent's motion and requesting additional time to respond because of the complexity of Respondent's memorandum and limited resources available to Appellant.

I find that Appellant has not shown good cause for leave to file out of time. Although the date Appellant received Respondent's motion is not shown or alleged, Appellant's motion was not received by the Board until 30 days after the Board received Respondent's Motion to Dismiss. Appellant made an inquiry on April 16, 1987, and was advised to file an appropriate motion for leave to file its response out of time. No response, however, accompanied the motion. The request for an extension of time, therefore, was not timely, even under Appellant's understanding of the time available.

In any event, it is clear from the pleadings and the documentations of record in the pleadings that the Board is without jurisdiction to consider this claim. It is manifestly not a claim which has been considered by the Contracting Officer or made the subject of a final decision as is required by Section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. §605(a)), which requires that "All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the Contracting officer for a decision."

WHEREFORE, it is 23rd day of April, 1987,

ORDERED that Appellant's Motion for Leave to File Out of Time be denied. Respondent's Motion to Dismiss is hereby granted. Appellant's claim for \$380,175 in indirect costs as stated in paragraph 5 of its amended complaint filed December 21, 1986, is dismissed.

EDWARD TERHUNE MILLER
Administrative Law Judge and
Member, Board of Contract Appeals

Washington, D.C.

ETM:paw